



BOARD OF SUPERVISORS COUNTY OF LOS ANGELES

383 KENNETH HAHN HALL OF ADMINISTRATION / LOS ANGELES, CALIFORNIA 90012

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(213) 974-1411

December 11, 2007

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

DELETION OF INDEMNIFICATION CLAUSES FROM HEARING OFFICER AND ARBITRATOR SERVICES AGREEMENTS (ALL SUPERVISORIAL DISTRICTS AFFECTED) (3-VOTE)

IT IS RECOMMENDED THAT YOUR BOARD:

Approve the deletion of indemnification clauses from existing agreements for services of arbitrators, labor mediators, fact-finders, mediators, and/or hearing officers which were approved by your Board, June 12, 2007. The recommended clauses to be deleted are Article E, paragraph #2, page 15 and Article P, page 20.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

In June 2007, your Board approved agreements with individuals to provide services as arbitrators, labor mediators, fact-finders, mediators, and/or hearing officers for the Civil Service Commission, the Employee Relations Commission, and the Office of Affirmative Action Compliance.

Included in the agreement were two clauses to indemnify the County for liability arising from acts and omissions of the above mentioned individuals. These unduly burdensome clauses have deterred some of the most experienced individuals from continuing to provide arbitration, fact-finding, mediation and hearing officer services to the County.

County Counsel advises that indemnification clauses in these particular agreements are not essential, due to the fact that individuals acting within the scope of their agreement do so in a quasi-judicial capacity and are generally afforded absolute immunity in that capacity.

County Counsel also advises that at least one State Arbitrator, Retired Justice Joseph Grodin of the California Supreme Court has recently ruled that similar indemnification clauses in the State of California agreements are subject to negotiation, because such unduly burdensome provisions are not State law and raise the risk that competent experienced individuals will be deterred from offering their services. As a consequence, the State of California dropped these provisions from their agreements.

Recently the California Association of Professional Employees (CAPE) filed an unfair labor charge with the Employee Relations Commission asserting that the County is required to negotiate the indemnification clauses in the agreements for arbitrators, mediators, fact-finders and hearing officers based on Justice Grodin's ruling. We have been advised that the Los Angeles County Employee's Association (SEIU Local 721) intends to file a similar charge. The removal of these clauses will remedy their grievance.

The deletion of these indemnification clauses has been reviewed by County Counsel and the Chief Executive Officer's Risk Management Branch. They concur with these recommendations.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs that we provide workforce excellence (Goal 2) and organizational effectiveness (Goal 3). This recommendation to delete the indemnification clauses in these agreements will promote workforce excellence and organizational effectiveness through the prompt resolution of personnel and employee relations matters, resulting in uninterrupted services to the employees and improved relationships between the County and its employees.

FISCAL IMPACT/FINANCING

There will be no additional financial impact.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The following indemnification clauses are being deleted:

Article E, paragraph #2 "The Consultant shall indemnify and hold harmless the County, and its special districts, elected officials, Directors, employees and agents from and against any and all liability, damages, costs, and expenses, including but not limited to, defense costs and attorney fees, arising from or related to any violation on the part of the Consultant or its employees, agents, or sub-consultants of any such laws, rules, regulations, ordinances, or directives."

Article P "The Consultant shall indemnify, defend and hold harmless the County, its special districts, elected and appointed directors, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the Consultant's acts and/or omissions arising from and/or relating to this Agreement.

IMPACT ON CURRENT SERVICES

Approval of this recommendation will ensure continued uninterrupted services, assist in reducing scheduling time for hearings, arbitrations, and mediations; and attract more experienced individuals to hear such cases, thereby enhancing the settlement of employee relations and civil service cases.

CONCLUSION

Upon approval of this recommendation, the Executive Officer will notify those individuals with current agreements that these indemnification clauses are no longer in effect. In future agreements, these clauses will be deleted.

Respectfully submitted,



Sachi A. Hamai
Executive Officer

SAH:JS

c: Chief Executive Officer
County Counsel